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SUSAN SANDELMAN, AS TRUSTEE
OF THE ESAN TRUST

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUSAN SANDELMAN, AS TRUSTEE
OF THE ESAN TRUST,

Plaintiff,

v.

B&B PROPERTY MANAGEMENT, LLC,
dba BELLACH'S LEATHER FOR
LIVING,

Defendant.

NO. C 08 00681 HRL

**[PROPOSED] ORDER DENYING
MOTION TO SET ASIDE DEFAULT**

Date: July 8, 2008
Time: 10:00 a.m.
Dept: Courtroom 2, 5th Floor

The motion of Defendant, B&B MANAGEMENT GROUP, LLC ("B&B"), for an order setting aside the default previously entered in this matter came on regularly for hearing on July 8, 2008, the Honorable Howard W. Lloyd, Judge Presiding. Plaintiff, SUSAN SANDELMAN, AS TRUSTEE OF THE ESAN TRUST, appeared through Darryl J. Horowitt of Coleman & Horowitt, LLP. Defendant, B&B, appeared through Mikel D. Bryan of the Law Offices of Mikel D. Bryan.

The court, having considered the papers and pleadings on file herein, and the oral argument of counsel, finds as follows:

1. Plaintiff has made a proper request of this court to take judicial notice of documents and facts; this court shall thus take judicial notice of such documents and facts.
2. Defendant was served with the complaint in this matter on February 8, 2008;

1 *Susan Sandelman, etc.*
2 *v. B&B Property Management, LLC*
3 Case No. C 08 00681 HRL

4 3. By virtue of the date of service, a response to the complaint was due on or before
5 February 28, 2008;

6 4. On March 12, 2008, Bellach's Leather for Living, Inc., filed an ex parte
7 application for temporary restraining order and issuance of an OSC re preliminary injunction.
8 See Exhibit "B" to Plaintiff's Request to Take Judicial Notice. In the application, Bellach's
9 requested that injunctive relief be granted by the court to prevent Plaintiff from entering a default
10 against B&B. In doing so, Bellach's made it clear that it had common ownership with B&B and,
11 further, that B&B knew that it had to file a response to the complaint and was late in doing so.

12 5. On March 21, 2008, Bellach's reiterated B&B's knowledge of the need to file a
13 responsive pleading in this action when Bellach's bankruptcy counsel advised the bankruptcy
14 court that injunctive relief was needed to prevent Plaintiff from entering a default in this matter
15 and, further, that B&B intended to hire counsel to file a responsive pleading in this matter. B&B
16 thus knew on March 21, 2008, that its answer was already due.

17 6. B&B did not attempt to file a responsive pleading prior to the evening of April 4,
18 2008, despite prior knowledge that such a response was due earlier than April 4, 2008. Prior to
19 its attempt to file a responsive pleading in this matter, neither B&B nor its counsel requested an
20 extension of time to file a responsive pleading nor applied to the court for such an extension.

21 7. The actions of Plaintiff's counsel in filing a request for entry of default were
22 proper and Plaintiff's counsel did not take advantage of Defendant's counsel in filing Plaintiff's
23 request for entry of default.

24 The court, having made the above findings of fact, and good cause appearing therefor,

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

26 1. Plaintiff's request to take judicial notice is hereby GRANTED; the court shall
27 take judicial notice of the documents identified in the notice as well as the facts in the request;

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1 *Susan Sandelman, etc.*
2 *v. B&B Property Management, LLC*
3 Case No. C 08 00681 HRL
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5 2. Defendant's motion to set aside default is hereby DENIED.
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7 Dated: _____
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10 HON. HOWARD R. LLOYD
11 UNITED STATES MAGISTRATE JUDGE
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